



**SUBMISSION TO THE SPECIAL RAPPORTEUR AT THE OFFICE OF THE UN HIGH  
COMMISSIONER FOR HUMAN RIGHTS**

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## Submissions to OCHCR | Statelessness: A Minorities Issue

The Scalabrini Centre of Cape Town<sup>1</sup> and the Legal Resources Centre<sup>2</sup> are non-governmental organisations, based in South Africa, providing free legal services to refugee and migrant communities. This joint submission is based on our daily work with migrant and refugee minority populations. This submission focused on four main population groups which we find to be at specific risk of statelessness in South Africa; (a) children born to one or more foreign undocumented parents and/or foreign parent who does not have valid (expired) documentation (b) separated or unaccompanied foreign minors and (c) Angolan former refugees, especially those of a Bakongo ethnic origin.

### **1. What are the main obstacles to minority people obtaining and/or retaining nationality? Why do minorities seem to be particularly affected or even targeted in this respect?**

*(a) Children born to one or more foreign undocumented parent in South Africa and/or foreign parent who does not have valid (expired) documentation*

1.1 There continue to be reports relating to the refusal by the Department of Home Affairs to register the birth of children born to at least one parent (a mother) or both parents whose permits are not currently valid. In most cases the mothers have written confirmation from maternity obstetric units confirming the birth of the child and that they gave birth in South Africa. However, without any valid documentation to prove legal stay in South Africa, the births of children born to certain foreign national parents continue to remain unregistered. This is because South Africa's birth registration regulations and practices of the Department of Home Affairs requires both parents or at least the mother to be documented before they can register the birth of any child born to non-South African parents.

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<sup>1</sup> The Scalabrini Centre of Cape Town is an NGO that offers specialized services to migrants, refugees and South Africans. Scalabrini's services focus in four key areas including para-legal advice, advocacy and knowledge sharing, socio-economic integration and well-being and welfare. The Advocacy Team works on two mutually informing levels. Firstly, paralegal advice and practical assistance are provided to individual clients on a walk-in basis. Secondly, the Advocacy Team works to drive deeper systemic change in the South African society and immigration and asylum systems through submissions, research and awareness campaigns.

<sup>2</sup> The Legal Resources Centre (LRC) is South Africa's largest public interest, human rights law clinic. Established in 1979, we use the law as an instrument of justice for the vulnerable and marginalised, including poor, homeless and landless people. We seek creative and effective solutions by using a range of strategies. These include impact litigation, law reform, participation in partnerships and development processes, education, and networking within South Africa, the African continent and at the international level.

- 1.2 In the case of a child born to one or two foreign parents, a valid asylum seeker permit, refugee status, or immigration permit is required.<sup>3</sup> Without valid documentation, a child of foreign parent(s) cannot be issued a birth certificate.
- 1.3 Regulations pertaining to birth registration in South Africa pose an obstacle to children born to foreign nationals. Section 28 of the Constitution of South Africa provides that every child in South Africa has the right to a name and nationality from birth. Children born in South Africa are typically issued an unabridged birth certificate, which states the names and nationalities of the child's parents, where possible. The birth certificate is therefore a pathway to the determination of the child's nationality. The birth certificate is a key document in terms a child's access to basic rights such as education and health. The Birth and Deaths Registration Act governs the issuance of birth and death certificates in South Africa. The Regulations on the Registration of Births and Deaths, which was amended in 2014, sets out the processes required for parents to apply for a child's birth certificate.
- 1.4 We submit that the Birth and Death's Registration Regulations as they are currently drafted and implemented are unconstitutional as it contravenes rights entrenched in the Constitution and creates an environment that fosters child statelessness. These regulations include but are not limited to:
  - 1.4.1 Regulation 4(3)(f) as it pertains to recognized refugees giving notice in terms of regulation 7, as only refugees with valid documentation may give notice;
  - 1.4.2 Similarly regulation 8(3)(c) and 8(3)(e) proves to be problematic as valid documentation is required for either parent to give notice of the birth of their child; and
  - 1.4.3 Regulation 8(3)(g) proves to be problematic because of refugees and asylum seekers who are married but have no proof thereof as a result of fleeing their country – this results in the department official dealing with the registration application in terms of regulation 12 (a child born out of wedlock) which requires valid documentation from the mother.
- 1.5 It would seem that children born to foreigners in South Africa form a minority at specific risk of statelessness. The right to a name and nationality from birth in a constitutional right of all

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<sup>3</sup> As per Regulations 7 and 8 of the Regulations on the Registration of Births and Deaths Act.

children in South Africa. We are of the view that this right includes the right to have the birth registered. We argue that this right is inherent to all children, regardless of nationality or the status of their parents. In this regard, we would assert that Sections of the Regulations on the Registration of Births and Deaths are therefore unconstitutional and should be amended.

*(b) Separated or unaccompanied foreign minors*

1.6 Separated or unaccompanied foreign minors in South Africa are likely to be undocumented and are at risk of statelessness due to restrictive immigration laws and difficulty in accessing documentation. Research undertaken by Scalabrini in September 2015, entitled 'Foreign children in care in the Western Cape Province' surveyed all foreign children placed in Child and Youth Care Centres in the province. Of those surveyed, a large number of children had no birth certificate or document which would enable a claim to any particular nationality (80%). Based on factors such as irregular migration, lack of enabling documentation and lost contact with family, it was estimated that 15% of children were at some risk of statelessness. A second study by Scalabrini in September 2017, entitled 'Unaccompanied and Separated Foreign Children in the Western Cape, South Africa: Exploring (the lack of) durable solutions for children in informal relations of care', found that 55% of the survey children lacked a birth certificate, and 21% of the children were considered to be at risk of statelessness.

1.7 Undocumented migrant children in South Africa, especially, are practically unable to access appropriate documentation due to the onerous and restrictive Immigration Act and regulations.<sup>4</sup> Refugee children can, in theory, apply for asylum in terms of the Refugees Act.<sup>5</sup> In reality, their access to this provision is hindered due to the closure of refugee reception offices where asylum applications are lodged and due to the fact that the asylum system is overloaded, understaffed and under-capacitated.

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<sup>4</sup> For example, an undocumented migrant child in South Africa could be appropriately documented by a study permit or a permit to join a relative holding temporary residency. However, in reality, this would require that a child exit South Africa, be declared 'undesirable' upon exiting the border which evokes a five-year ban from re-entering the country, appeal this ban and, if successful, apply for a permit in the South African consulate in the country of origin. This application itself requires several documents including confirmation of a place at a school and medical aid amongst other documentation. There is no guarantee that this permit would be issued. This process not only places the child at risk of being denied re-entry into South Africa, it is an overly onerous and expensive process.

<sup>5</sup> Section 32 of the South African Refugees Act makes specific provision for unaccompanied minors applying for asylum in South Africa.

1.8 Separated or unaccompanied foreign minors who migrate to South Africa are further put at risk of statelessness due to the lack of documentation pertaining to their birth and existence in their country of origin. Family tracing systems and methods of acquiring documentation pertaining to these children is difficult. For one, the International Social Services does not have the capacity to undertake tracing and, in many African countries, International Social Services do not have relevant counterparts to undertake tracing. Social workers working in the South African Department of Social Development typically do not have capacity to undertake tracing or to request documentation from children's country of origin.

*(c) Angolan former refugees, especially those of a Bakongo ethnic origin.*

1.9 Some Angolan former refugees in South Africa cannot access proof of birth and therefore are at risk of statelessness. The Angolan's consulate inability to establish Angolan through alternative means results in these individuals being unable to prove their nationality. The Advocacy Programme at Scalabrini has focused on assisting Angolan refugees affected by the Cessation of Angolans' refugee status since 2013. Several Angolans, especially those with expired refugee or asylum documents, were not able to access Angolan passports during the Cessation. Those Angolans born in rural areas (especially in Uige, Mbanza Congo) during the Angolan wars were not issued with birth certificates. If they were not able to access passports during the Angolan Cessation and they remained in South Africa, these individuals are now undocumented. Scalabrini presented some of the most vulnerable cases to the Angolan consulate over the course of ten meetings since 2013. The Angolan consulate is unable to establish alternative means to establish Angolan nationality, and refused to issue any letters that found these individuals 'not to be Angolan citizens', despite verbally claiming so. These meetings are typically held in Portuguese; Kikongo speaking individuals have reported feeling excluded as they cannot speak Portuguese. Some individuals have been told by Angolan authorities that, as they cannot speak Portuguese, they are most likely Congolese nationals. Furthermore, despite documentary proof that a person is born to an Angolan mother or father, the Angolan consulate refuses to recognise them as Angolan nationals. This is contrary to Angolan Nationality Law.<sup>6</sup>

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<sup>6</sup> Article 9 of the Angolan Nationality Law confirms that those born to an Angolan mother or father outside Angola are able to access Angolan citizenship.

## **2. What are the challenges and gaps you identify in terms of existing international and regional instruments?**

2.1 Regionally, statelessness appears to be of interest to the Southern African Development Community (SADC) – but this interest does not translate into implementable laws, policies or regulations that bind states. The 40th Plenary Assembly Session of SADC Parliamentary Forum, for example, signed a Notice of Motion on the Prevention of Statelessness and the Protection of Statelessness and the Protection of Stateless Persons in the SADC Region. This document calls upon national parliaments and governments in the SADC region and to resolve any existing situations of statelessness within our own countries. Whilst we welcome such standpoints, their non-binding nature means little change is realised in terms of legislative reform.

2.2 Though there are protections of the right to nationality in the African Human Rights systems, there is however no specific convention on statelessness in Africa. In Article 6, of the African Charter on the Rights and Welfare of the Child provides for the rights to nationality as well as the African Protocol on the Rights of Women in Africa. The Committee of Experts on the Rights and Welfare of the Child have shown that implemented effectively the ACRWC can adequately address statelessness affecting children. Other cases decided like the Nubia case have also shown that even without a specific protocol on nationality; the current African protections offer some protection. However, the African human rights system still fails to adequately address statelessness as a whole as it is currently provided in a manner that does not effectively address the issue. We stress that it is important and crucial for Africa to take new decisive steps towards identifying, preventing and reducing statelessness and protecting the right to nationality a protocol on the right to nationality is necessary and can be adopted in terms of Article 66 of the African Charter. We commend the African Commission for having drafted a Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and The Eradication of Statelessness in Africa.<sup>7</sup> We remain hopeful that we will continue to see positive steps being taken to make this protocol a reality in Africa and that, when the time comes, it receives the required signatures to make it law and that states will ratify this protocol.

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<sup>7</sup> [https://au.int/sites/default/files/newsevents/workingdocuments/34175-wd-draft\\_citizenship\\_protocol\\_en\\_may2017-jobourg.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/34175-wd-draft_citizenship_protocol_en_may2017-jobourg.pdf)

**3. What is the specific legislative, institutional and policy framework at the national and local level that governments undertake to address the issue of statelessness? Please provide examples of key laws, policies and practices, including good practices, as well as gaps.**

*(a) The Constitution of South Africa*

3.1 As already mentioned above, section 28(1)(a) of the Constitution of South Africa guarantees every child, regardless of origin, the right to a name and nationality from birth. We believe that this provision is enabling and informing legislation for how the protection of, and acquiring citizenship should be regulated in South Africa. We further believe that this provisions aims to ensure that all children are able to acquire nationality from birth without discrimination.

*(b) The South African Citizenship Act*

3.2 The South African Citizenship Act, which was amended in 2010, makes provision at Section 4(3) for those foreign children born in South Africa to be granted South African citizenship upon attaining majority.<sup>8</sup> We welcome this provision as it provides potential pathways to foreign children born and raised in South Africa; some of whom may have great difficulty in accessing alternative documentation, as discussed in Question 1 of this submission. There are two difficulties in this provision, however. Firstly, Section 4(3) speaks to those children whose births are registered. As above-mentioned, a child cannot be issued a birth certificate unless their parents hold valid documentation. Undocumented foreign children, who are born in South Africa but do not hold birth certificates are at risk of statelessness and are not able to access the provisions set out at Section 4(3) of the Citizenship Act. Secondly, the Department of Home Affairs claims that because Section 4(3) came into effect in 2013, it only applies to children born after 2013. This would mean that the section can only be implemented for those turning 18 after 2031. The Legal Resources Centre initiated litigation in this regard,

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<sup>8</sup> Section 4(3) reads: 'A child born in the Republic of parents who are not South African citizens or who have not been admitted into the Republic for permanent residence, qualifies to apply for South African citizenship upon becoming a major if- (a) he or she has lived in the Republic from the date of his or her birth to the date of becoming a major; and (b) his or her birth has been registered in accordance with the provisions of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992).'

requesting that the Department of Home Affairs implement Section 4(3) of the Citizenship Act retrospectively to include those who attain majority by 1 January 2013.<sup>9</sup>

3.3 The South African Citizenship Act also makes provision, at Section 2(2) for those individuals who are born in South Africa who do not have the citizenship rights or nationality of any other country.<sup>10</sup> Whilst we welcome this provision in dealing with statelessness, we note that this Section has only been applied in one individual's case – which required litigation – partly due to the fact that there are no regulations on how to make an application in terms of this Section. Lawyers for Human Rights, who litigated on this matter in the case *Minister of Home Affairs v DGLR and another* (1051/2015SCA), reported on the success of their court case:

*Given that there are no regulations accompanying Section 2(2) of the Act, there is no clear application procedure or guidelines on how to apply this provision in practice. Thus, the application was also brought in the public interest and on behalf of similarly situated children. As such, the court order further directed the minister to draft regulations to make the purpose of Section 2(2) achievable. Such regulations could include guidance on how to assess if an applicant is stateless. Regulations could also include an application form for 2(2) citizenship. At the moment, no application form exists and this section of the Citizenship Act is virtually unknown, even in Home Affairs' head office.*

*(b) The Immigration Act of South Africa*

3.4 Whilst the Immigration Act of South Africa was in no way set out to address statelessness, one provision permits for Ministerial discretion. Section 31(2)(b) of the Immigration Act reads:

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<sup>9</sup> The Western Cape High Court handed down a judgement in September 2017 which affirmed that children who were born in South Africa to foreign parents are entitled to apply for citizenship, through the South African Citizenship Act, even if they were born before the 2010 Amendment, which came into effect in 2013. This was subsequently appealed by the Department of Home Affairs and the matter is due to return to court later in 2018.

<sup>10</sup> Section 2(2) states: '(2) Any person born in the Republic and who is not a South African citizen by virtue of the provisions of subsection (1) shall be a South African citizen by birth, if (a) he or she does not have the citizenship or nationality of any other country, or has no right to such citizenship or nationality; and (b) his or her birth is registered in the Republic in accordance with the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992)'.

*Upon application, the Minister may under terms and conditions determined by him or her ... (b) grant a foreigner or category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist which would justify such a decision...'*

3.5 The Legal Resources Centre and the Scalabrini Centre of Cape Town have interpreted Section 31(2)(b) to allow for the applications made for permanent residency in South Africa by those individuals who are at risk of statelessness. With regards to foreign children placed in Child and Youth Care Centres, for whom family tracing has been exhausted and an application to permanent residency is considered in their best interests, an application can be lodged in terms of Section 31(2)(b). Jointly, Scalabrini and Legal Resources Centre have lodged 23 exemption applications in terms of Section 31(2)(b).<sup>11</sup>

3.6 Whilst not all of these applications related to statelessness, the applications were made on behalf of undocumented foreign children, a minority we believe to be at risk of statelessness. Of these applications, four have been successfully granted permanent residency. This was part of a multi-party BID, facilitated by UNHCR during the Angolan Cessation of 2013. The remaining applicants are awaiting a decision by the Minister of Home Affairs. The only mechanism to compel the Minister of Home Affairs to take a decision on these applications is by approaching the High Court; a complex and costly procedure. Again while this approach grants the person the legal status in South Africa, it does not deal with the issue of statelessness. The person remains stateless and this means that the person has to wait for another ten years because they can apply for citizenship in terms of the Citizenship Act, meanwhile they remain stateless.

*(c) Department of Social Development Guidelines (Policy framework)*

3.7 Nationally, the Department of Social Development Guidelines require the immediate registration and documentation of the child at birth, but are silent on the details of how to achieve this. The Guidelines provide no indication of the type of registration that must take place, or the documentation which must be obtained. In fact the Guidelines have no practical effect since no registration mechanism or documentation category is in place. Moreover, the

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<sup>11</sup> Six of these applications were made as part of the Angolan Cessation, which affected some Angolan minors in Child and Youth Care Centres (CYCC). The remaining 17 applications are made on behalf of various foreign children in CYCCs in the Western Cape.

Department is not the custodian of identification documentation, which must be issued by the Department of Home Affairs.<sup>12</sup>

#### **4. How are legislative and policy measures implemented and what is their impact on reducing statelessness?**

4.1 As above mentioned in more detail, the implementation of the South African Citizenship Act is problematic as there are no regulations to govern applications made under this Act, and because Section 4(3) is not applied retrospectively. Should the Department of Home Affairs adhere to the orders set out in the case Minister of Home Affairs v DGLR and another (1051/2015SCA), and should the Department of Home Affairs duly consider applications made in terms of this Section of the Citizenship Act, greater steps could be taken to reduce statelessness in South Africa.

4.2 As abovementioned in more detail, the implementation Section 31(2)(b) of the Immigration Act of South Africa could assist in reducing statelessness in South Africa. However, the Department of Home Affairs has a low rate of response to such applications. If the Department of Home Affairs had improved capacity and responsiveness to these applications, greater steps could be taken to reduce statelessness in South Africa.

4.3 As mentioned above, placing a policy in place which identifies documenting children as a priority does not have any material effect if no practical measures and/or guidelines are accompanied with the policy. In order to implement policies, departments must provide for implementation guides in order for policies to have practical effect.

#### **5. What are the challenges to effectively address statelessness, including its causes and impact on minorities?**

5.1 Some of the challenges to effectively address statelessness include gaps or restrictions in nationality laws, for example, South African law does not allow for foreign children who are born within South Africa to automatically acquire South African citizenship at birth.

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<sup>12</sup> Sloth-Nielsen J and Ackermann M *Unaccompanied and Separated Foreign Children in the Care System in the Western Cape – A Socio Legal Study* PER / PELJ 2016(19) - DOI <http://dx.doi.org/10.17159/1727-3781/2016/v19i0a1207> [Accessed 22 May 2018].

- 5.1.1 Section 4(3) of the Citizenship Act states that any person born in South Africa to non-South African parents qualifies to apply for citizenship after turning 18, if they have lived in South Africa all their lives and their birth has been registered. As we have already mentioned birth registration of children born to South Africa is currently not consistently applied with many people being turned away without registering the births of their children because they are undocumented or non-South Africans. Similar requirements of being a major with birth registered in South Africa before a person qualifies to apply for citizenship is also applicable to children born in South Africa to permanent residents in section 2(3) of the Citizenship Act.
- 5.1.2 Additionally, the limitation in section 4(3), that a person must have turned 18 to qualify to apply for citizenship, poses a challenge for stateless children. This provision fails to provide the manner in which such children can apply to be legally present in South Africa. Our experience shows that without such documentation options children who fall in this category have the right to apply for citizenship in terms of section 4(3) but by the time they are able to do so, they are not able to apply because they would have been without documentation that enabled them to be legally present in South Africa. They would therefore not be of “good character” as is required by section 5(1) below. Further, these children would have been without education, health, social services and other services that are linked to an identification document. For ease of reference section 5(1) of the Citizenship Act, inter alia, that a certificate of naturalisation is granted if the person concerned “*is not a minor; and, he or she has been admitted to the Republic for permanent residence therein; and he or she is ordinarily resident in the Republic and that he or she has been so resident for a continuous period of not less than five years immediately preceding the date of his or her application; and he or she is of good character; and he or she intends to continue to reside in the Republic or to enter or continue in the service of the Government of the Republic or of an international organisation of which the Government of the Republic is a member or of a person or association of persons resident or established in the Republic; and he or she is able to communicate in any one*”

*of the official languages of the Republic to the satisfaction of the Minister; and he or she has adequate knowledge of the responsibilities and privileges of South African citizenship; and he or she is a citizen of a country that allows dual citizenship: Provided that in the case where dual citizenship is not allowed by his or her country, such person renounces the citizenship of that country and furnishes the Minister with the prescribed proof of such renunciation”.*

5.1.3 The specific section that has direct application to stateless persons, section 2(2) of the Citizenship Act, which allows a person who does not have the citizenship or nationality of any other country, or has no right to such citizenship or nationality to apply for citizenship is also qualified. Such person would need to have their birth registered in South Africa in terms of the Births and Deaths Registration Act. As we have said, birth registration for undocumented or non-South Africa is currently very difficult to access and it is highly likely that some children envisaged in section 2(2) will not have birth certificates.

5.2 Another challenge faced by stateless persons is the fact that even when laws such as section 2(2) of the Citizenship Act are put in place the government does not put any regulations on how to actually apply and benefit from the benefit envisaged. This means the laws are only on paper and in reality, the laws has no impact at all as there is no way for those who qualify to apply for it. This state of affairs led the United Nations Committee on Rights of the Child recommended in 2016 that the government of South Africa “*put in place regulations to grant nationality to all children under the jurisdiction of the State party who are stateless or are at risk of being stateless*’ and to ‘*consider ratifying the Convention Relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961*”.

5.3 The birth registration laws and regulations does not allow anyone who does not meet its requirements to register the birth of a child. There is exemption of flexibility in Regulation 8 of the Regulations to the Births and Deaths Registration Act. This Regulation specifies mandatory documents that must be provided by the mother or father of the child before the birth can be registered – where it is not possible to produce such documents, the parent(s) are simply turned away and told to bring these

documents before they are allowed to register the birth of their child. Statelessness is caused by different issues depending on countries, in some cases it may be caused by discrimination against a particular ethnic group, as is the case in this instance where birth registration is only afforded to children whose parents are able to meet the requirements of the Births and Deaths Registration which obviously violates the informing nationality provision in the Constitution of South Africa.

5.4 Statelessness has a huge impact on minorities in that stateless people may be denied socio-economic rights such as health care, education, freedom of movement and often people live in fear of arrest and arbitrary detention as they are not able to prove their identity or legal status in the country. In South Africa the experience of stateless persons as all the services offered above require a positive identification through a picture identification document which leaves such persons with limited or no access to such rights.

## **6. Please provide specific case studies of stateless populations and their human rights situation.**

### *(a) children born to one or more foreign undocumented parent in South Africa*

6.1 Children born to undocumented parents cannot be issued with birth certificates, meaning that these children cannot claim nationality or citizenship. If the parent dies or they abandon the child before a birth certificate has been issued, the child may become at risk of statelessness. The lack of a birth certificate leads to inability to claim nationality or acquire legal status. The inability to produce a legal document may lead to abuse and exploitation or even arrest if the child cannot prove their age.

6.2 **Case Study:** Rosa (9) year old born to undocumented Zimbabwean parents in South Africa. The mother could not get a birth certificate because she has no valid documents. Rosa's father is also undocumented. Later on Rosa's parents abandoned Rosa, the mother moved back to Zimbabwe with another man. Rosa's father is a drug addict who stays on the streets and his current location is unknown. Rosa is now being cared for by her paternal grandmother who holds refugee status. Rosa is at risk of statelessness as there is no record of her birth both in Zimbabwe or South Africa. The mother has disappeared and has no contact with Rosa. Rosa remains undocumented and has no options of documentation. As a

refugee Rosa's grandmother is not all able to travel to Zimbabwe with Rosa in order to claim Zimbabwean nationality. The child has been successfully been enrolled in school but the school is always demanding a birth certificate or legal status for Rosa.

*(b) separated or unaccompanied foreign minors who are at risk of statelessness*

6.3 As mentioned above the Scalabrini Centre together with LRC lodges applications in terms of Section 31(2)(b) of the Immigration Act requesting the Minister to grant permanent residence to certain individuals.

6.4 **Case Study:** Tom was abandoned by his caregiver at a very young age around 3 years old and he is now 20 years old. It is not known where Tom was born and his nationality could not be confirmed. The boy was granted permanent residence through exemption but he remains stateless. In the meantime Tom can access services but is not able to get a travel document / passport meaning that he cannot exit the country. His permanent residence certificate states that his nationality and country of birth is unknown. Tom has to wait for another ten years before he can apply for South African Citizenship.

6.5 There are limited documentation options for separated or unaccompanied children in South Africa due to very restrictive immigration laws and this has a serious impact on this category of children. In certain cases it becomes difficult for such children to fully enjoy their human rights like to access to school, health services, freedom of movement may be limited (travelling outside the country or even within the country due to lack of travel documents) etc. Where for example, they are able to enrol in school it becomes a challenge to write examinations or to proceed to university or to look for employment. There are no laws or mechanisms put in place to prevent statelessness

6.6 When the children reach the age of 18, they become at risk of arrest and prolonged detention for deportation purpose.

*(c) Angolan former refugees, especially those of a Bakongo ethnic origin*

6.7 Scalabrini assists several individuals who were born in Angola during the wars and who fled to South Africa during the late 1990s. These individuals were granted refugee status in South Africa and have, since 2013, not been able to extend their refugee status as the Cessation of Angolan Refugee Status was announced by the South African government. Some former Angolan refugees did not hold sufficient proof that they were indeed born in Angola. This

was especially difficult for those of Bakongo ethnic origins, from M'banza Congo/Uige Province, or those born in rural areas, or those born in families that were split up and who cannot trace relevant family members any longer.

6.8 Currently undocumented in South Africa, these clients are at risk of deportation and detention in South Africa. Should they be arrested, they are unable to be deported as Angolan authorities will not recognise them as a national. These clients are unable to work legally, open bank accounts (or access money frozen in bank accounts when their refugee status was ceased), legally marry, pay taxes or engage with 'formal society' in any meaningful way.

**7. Please provide detailed information and data on the gender-perspective of statelessness, including any legislative and policy developments with regard to acquisition and transfer of nationality and how this impacts on minority women and girls.**

*(a) children born to one or more foreign undocumented parent in South Africa and/or children born to one or more foreign parent who does not have valid documentation*

7.1 The regulation preventing children born to one or more foreign undocumented parent or parent(s) who does not have a valid document in South Africa accessing a birth certificate does not confer less stringent requirements for mothers than it does for fathers. However, in the event that a child is born to an undocumented mother or a mother who does not have a valid document and mother approaches the Department of Home Affairs to register the birth of her child. This mother will not be able to register the birth of her child because she will not be able to meet the documentary requirements for birth registration. Without birth registration, the mother will not be able to pass her nationality to her new born child as there is no official document that links her to her child.

7.2 Further, in the event that a child is born to an undocumented mother or a mother who does not have valid documentation and a South African father with documentation that confirms his nationality, the South African father will struggle to register the birth of his child. When a child is born in South Africa the proof of birth certificate issued by the clinic or hospital where the child is born is generally issued with the mother's name and without the father's name. The South African parent will therefore not be allowed to register the birth of his child as one of the required documents is the proof of birth certificate. Without this certificate, the father will not be able to meet the documentary requirements to register the birth of his child. The

father will have to pay for DNA test in order to prove that he is indeed the father. If the father is however unable to afford to pay for a DNA test then the birth of his child will go unregistered and he is therefore not able to pass his nationality to his child, placing the child at serious risk of being stateless.

*(b) separated or unaccompanied foreign minors who are at risk of statelessness*

7.3 Research on unaccompanied or separated foreign children living with family members in the Western Cape (2017) found 54% of the surveyed children to be female. Research on foreign minors placed in Child and Youth Care Centres in the Western Cape (2015) found 40% of the surveyed children to be female. In both pieces of research, gender is not noted as a strong factor in statelessness amongst these children.

*(c) Angolan former refugees, especially those of a Bakongo ethnic origin*

7.4 Of the clients who have been assisted by Scalabrini in approaching the Angolan consulate for a consideration of their nationality, 50% are female. It is not noted that gender is a pertinent factor in them being at risk of statelessness.

**8. How have minorities in particular been affected by forced population movement and migration? Have those consistently resulted in statelessness among minorities? Please provide case studies in that regard, in particular in the context of conflict and humanitarian crises.**

8.1 Minority groups are forced to flee their countries due to persecution, war and human rights violations. When people flee, important documents are either not packed when people flee in a rush or they get lost along the way. Many minority groups and generally anyone forced to flee conflict, persecution or war may end up with no documentation to identify who they are. This means that even though such persons know where they come from they are not able to provide any documentary proof of their nationality without having to approach their consulate which may be very dangerous if they fled from war, conflict and persecution by state actors.

8.2 Some children are born on the way to the country of asylum and at the point of arrival, they arrive in such countries without documents confirming that the child in question is theirs. The country of asylum will likely refuse to register this birth if it did not occur within its

borders. Even if it did, the mother in this instance will not have any documentary proof that she indeed gave birth within the borders of the country of asylum.

8.3 Children born to undocumented or parents without valid documents may not be able register the births of their children due to restrictive laws.

**Case Study: Please refer to above-mentioned example relating to former refugee Angolans.**

**9. What is the impact of statelessness on the human rights situation of nomadic and crossborder minorities? Please provide information on and examples of regions most affected.**

We do not have any experience with this issue.

**10. Please provide any relevant information and statistics (including surveys, administrative data, legal and policy documents, reports and studies, and in particular those addressing the intersectionality between statelessness and minority rights)**

10.1 There exists no official statistic on the number of stateless persons in South Africa. A report by the Institute on Statelessness and Inclusion published in 2014 records South Africa as having 'more than 10,000' stateless persons.

10.2 Scalabrini has published research on unaccompanied or separated foreign children living with family members in the Western Cape (2017) and research on foreign minors placed in Child and Youth Care Centres in the Western Cape (2015). Both of these pieces of research make mention of statelessness and the risk of statelessness in terms of children not holding valid documentation.

10.3 In terms of understanding statelessness in South Africa, Lawyers for Human Rights have published a handbook, Promoting Citizenship and Preventing Statelessness in South Africa (2015) which outlines relevant international, regional, and national legislation and policy impacting on statelessness in South Africa.

## **11. What further role could the United Nations and international organisations play to increase awareness of statelessness as a minority issue?**

- 11.1 Within a South African context the UNHCR is mandated to play an advisory role – can only provide advice to government. We submit that the impact of the UNHCR would be much more useful and effective if this relationship was more stronger and require the UNHCR to play an active role in engaging actively with all levels of government on policy direction of the country including the signing of the two stateless conventions and the development of policies and laws relating to migration laws, refugee laws among others.
- 11.2 Further the UNHCR could also play active role in presenting, guide and intervene in the adjudication of applications for permanent residence through the exemption cases, provide stronger advice to DHA on dealing with exemption applications, provide guidance and opinions on citizenship applications and advise Home Affairs on the impact of rejecting certain persons especially in those cases where persons are stateless.
- 11.3 Further, the UNHCR could consider submitting amicus curiae briefs in cases that relate to stateless persons in order to provide a global context of stateless persons, the normative framework of stateless and highlight the need to decide on stateless cases in a manner that reduces statelessness. This will go a long way in building statelessness jurisprudence that assist in the way that stateless litigation will develop.
- 11.4 Further, in states like South Africa, that do not have stateless adjudication process, the UNHCR can step in and perhaps assist with such adjudication in order to ensure that more and more people are stateless because there is no mechanism for such adjudication and consequently no plans and strategy on how to document stateless persons and create pathways to citizenship or simply grant them citizenship upon such stateless adjudication. These interventions in courts can be done at national and regional courts.
- 11.5 The UN could also play the role of advocating and engaging with states to reform their policies and nationality laws in order to include stateless people. To ensure that this is done at all levels the UNHCR could actively engage with local populations that are stateless and develop lists of recommendations that can be presented to the following human rights mechanisms who can put these in lists of issues that are answered in writing and/or recommendations that must be complied with or in resolutions that can give general normative guidance for states and other role plays. These steps can be taken at the following human rights mechanisms:

- 11.5.1 Treaty bodies at both UN level and regional levels;
  - 11.5.2 Special mechanisms at both UN levels and regionals where such mechanisms are in place
  - 11.5.3 Universal Periodic Reviews
  - 11.5.4 Human Rights Council Resolutions among others.
- 11.6 Lastly, the UN and other international organisations should raise global awareness on statelessness issues and provide support to stateless people. This can be done through providing training and capacity building at local, national and regional level at identified stakeholders and role players in order to ensure that such persons understand stateless persons, their rights and needs and that particular stakeholders/role player's role in assisting stateless persons.

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\*\*\*ENDS\*\*\*